

## EXHIBIT A

### CERTIFICATIONS AND ASSURANCES

I/we make the following statement of assurances as a required element of the proposal to which it is attached, understanding that the truthfulness of the facts affirmed here and the continuing compliance with these requirements are conditions precedent to the award or continuation of the related contract(s):

1. I/we warrant that, in connection with this procurement:
  - a. All information presented in this proposal is true, correct, and complete to the best of my/our knowledge.
  - b. The prices and/or data have been determined independently, without consultation, communication, or agreement with other firms for the purpose of restricting competition.
  - c. Unless otherwise required by law, the prices and/or cost data which have been submitted have not been knowingly disclosed by the Bidder to any other Bidder or any competitor, and will not knowingly be disclosed prior to opening.
  - d. No attempt has been made or will be made by the Bidder to induce any other person or firm to submit or not to submit a proposal for the purpose of restricting competition.
2. The attached proposal is a firm offer, and may be accepted by the Insurance Commissioner (OIC) without further negotiation except where obviously required by lack of certainty in key terms.
3. In preparing this proposal or bid, I/we have not been assisted by any current or former employee of the State of Washington whose duties relate, or did relate to this proposal or prospective contract(s), and who was assisting in other than his or her official, public capacity. Neither does such a person nor any member of his or her immediate family have any financial interest in the outcome of proposal bid.
4. I/we understand that neither the OIC nor the Acquiring Party will reimburse me/us for any costs incurred in the preparation of this proposal. All proposals become the property of OIC, and I/we claim no proprietary right to the ideas, writings, items, or samples.
5. I/we warrant that no conflict of interest knowingly exists for any member of the project team that contributed to this proposal contract.

Any exceptions to these assurances are described in full detail on a separate page and attached to this document.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

## EXHIBIT B

### CHECKLIST FOR RESPONSIVENESS

- \_\_\_\_\_ Proposal was received by OIC on or before 3:00 p.m. on \_\_\_\_\_, 2004.
- \_\_\_\_\_ Proposal was formatted into four major sections: letter of submittal, technical proposal, management proposal, and cost proposal.
- \_\_\_\_\_ Proposer meets minimum qualification, which are:
  - \_\_\_\_\_ Provided information indicating a demonstrated knowledge of, and prior experience in, the areas of work for which the Bidder is submitting a proposal.
  - \_\_\_\_\_ Provided information indicating experience in providing evaluations or opinions for a state regulator on an insurer acquisition within the last 10 years.
- \_\_\_\_\_ Letter of Submittal and Certifications and Assurances were signed by an individual authorized to bind the Proposer to a contractual relationship, e.g., the President or Executive Director of a corporation, the managing partner if a partnership, or the sole proprietor if a sole proprietorship.
- \_\_\_\_\_ Three business references were provided.
- \_\_\_\_\_ A sample of the Bidders work for each of the categories bid (accounting and legal services).

NOTE: "Yes" answers must be given to each element above for the proposal to be considered responsive.

## EXHIBIT C

CONTRACT NO. \_\_\_\_\_

**CONTRACT FOR PERSONAL SERVICES  
BETWEEN  
WASHINGTON STATE  
OFFICE OF THE INSURANCE COMMISSIONER  
AND**

\_\_\_\_\_

This Contract is made and entered into by and between the Washington State Office of the Insurance Commissioner, hereinafter referred to as the "OIC," and the below named firm, hereinafter referred to as "Contractor,"

**Contractor Name** \_\_\_\_\_  
**Address** \_\_\_\_\_  
**City, State & Zip Code** \_\_\_\_\_  
**Phone** \_\_\_\_\_  
**E-mail** \_\_\_\_\_  
**Fax** \_\_\_\_\_  
**Washington State UBI No.** \_\_\_\_\_  
**Federal ID No.** \_\_\_\_\_

### **PURPOSE**

The purpose of this contract is to provide services for the OIC.

### **SCOPE OF WORK**

- A. The Contractor will provide services and staff, and otherwise do all things necessary for or incidental to the performance of work, as set forth in the scope of work, Section 3 of the RFP, the Contractors proposal dated \_\_\_\_\_, 2004, and XXX.

As more fully set forth in Section 3 of the RFP, the scope of work for this contract includes review of a Form A filing made April 9, 2004, in which OCCUM ACQUISITION CORP., WHITE MOUNTAINS INSURANCE GROUP, LTD., and WHITE MOUNTAINS RE GROUP, LTD., (hereinafter Acquiring Party) seek to acquire SAFECO Life Insurance Company and SAFECO National Life Insurance Company (hereinafter SAFECO entities), domestic insurers.

- B. Exhibit A contains the General Terms and Conditions governing work to be performed under this contract, the nature of the working relationship between the OIC and the Contractor, and specific obligations of both parties.

### **PERIOD OF PERFORMANCE**

Subject to other provisions, the period of performance under this contract will be from May 28, 2004 through December 31, 2004. The contract may be extended twice by amendment for a period of one year each at the sole discretion of the Authority and will not exceed a total contracting period of more than 3 years.

## **COMPENSATION AND PAYMENT**

Contractor's compensation for performance of all things necessary or incidental to the performance of work as set forth in the Scope of Work in the RFP dated \_\_\_\_\_, shall be based on the hourly rates set forth in Exhibit B, Schedule of Rates. The maximum compensation for the initial contract period shall not exceed \$\_\_\_\_\_.

## **BILLING PROCEDURES**

The Acquiring Party, upon approval of OIC will pay Contractor upon receipt of properly completed invoices. Invoices shall be submitted to the Project Manager within the first week of each calendar month for the previous month's services. The invoices shall describe and document to the OIC's satisfaction a description of the work performed, the category and sub-category of the work, the hours and hourly rate charged for each portion of the work.

Payment shall be considered timely if made by the Acquiring Party within thirty (30) days after receipt of properly completed invoices either electronically or in hard copy. Payment shall be sent to the address designated by the Contractor or may be paid by electronic transfer, if the Contractor prefers. Acquiring Party shall provide OIC a copy of all remittances.

The OIC may, in its sole discretion, terminate the contract or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this contract.

No payments in advance or in anticipation of services or supplies to be provided under this contract shall be made by the OIC.

## **CONTRACT MANAGEMENT**

The Contract Manager for each of the parties shall be the contact person for all communications and billings regarding the performance of this Contract.

Contract Manager for Contractor is:	Contract Manager for OIC is:
<u>Contractor Name</u> <u>Address</u> <u>City, State Zip Code</u> Phone: ( )                      Fax: ( ) E-mail address:	James T. Odiorne Post Office Box 40259 Olympia, Washington 98504-0259 Phone: (360) 725-7214 Fax: (360) 586-2022 E-mail address: JimO@oic.wa.gov

## **ASSURANCES**

OIC and the Contractor agree that all activity pursuant to this Contract will be in accordance with all the applicable current federal, state and local laws, rules, and regulations.

## **ORDER OF PRECEDENCE**

Each of the Exhibits listed below is by this reference hereby incorporated into this contract. In the event of an inconsistency in this contract, the inconsistency shall be resolved by giving precedence in the following order:

- Applicable federal and Washington State statutes and regulations
- Special Terms and Conditions as contained in this basic contract instrument
- Exhibit A – General Terms and Conditions
- Exhibit B – Schedule of Rates
- Exhibit C – Contractor's Proposal Dated \_\_\_\_\_, 2004
- Exhibit D – Request for Proposals Dated \_\_\_\_\_, 2004
- Any other provision, term or material incorporated herein by reference or otherwise incorporated.

## **ENTIRE AGREEMENT**

This Contract including referenced exhibits represents all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Contract shall be deemed to exist or to bind any of the parties hereto.

## **CONFORMANCE**

If any provision of this Contract violates any statute or rule of law of Washington State, it is considered modified to conform to that statute or rule of law.

## **APPROVAL**

This Contract shall be subject to the written approval of the OIC's authorized representative and shall not be binding until so approved. The Contract may be altered, amended, or waived only by a written amendment executed by both parties.

THIS CONTRACT, consisting of \_\_\_ pages and \_\_\_ attachments, is executed by the persons signing below who warrant that they have the authority to execute the contract.

[CONTRACTOR'S NAME]

OFFICE OF THE INSURANCE COMMISSIONER

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

APPROVED AS TO FORM

\_\_\_\_\_  
Assistant Attorney General

## **GENERAL TERMS AND CONDITIONS**

### **DEFINITIONS**

As used throughout this Contract, the following terms shall have the meaning set forth below:

- A. "OIC" shall mean the Washington State Office of the Insurance Commissioner, any division, section, office, unit, or other entity of the OIC, or any of the officers or other officials lawfully representing the OIC.
- B. "Agent" shall mean the Washington State Insurance Commissioner and/or the Insurance Commissioner's delegate authorized in writing to act on behalf of the Administrator.
- C. "Contractor" shall mean that firm, provider, organization, individual or other entity performing services under this Contract, and shall include all employees of the Contractor.

### **ACCESS TO DATA**

In compliance with Chapter 39.29 RCW, the Contractor shall provide access to data generated under this contract to OIC, the Joint Legislative Audit and Review Committee, and the State Auditor at no additional cost. This includes access to all information that supports the findings, conclusions, and recommendations of the Contractor's reports, including computer models and methodology for those models.

### **ADVANCE PAYMENT PROHIBITED**

No advance payment shall be made for services furnished by the Contractor pursuant to this contract.

### **AMENDMENTS**

This Contract may be amended by mutual agreement of the parties. Such amendments shall not be binding unless they are in writing and signed by personnel authorized to bind each of the parties.

### **AMERICANS WITH DISABILITIES ACT (ADA) OF 1990, PUBLIC LAW 101-336, also referred to as the "ADA" 28 CFR Part 35**

The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

### **ASSIGNMENT**

The work to be provided under this Contract, and any claim arising thereunder, is not assignable or delegable by either party in whole or in part, without the express prior written consent of the other party, which consent shall not be unreasonably withheld.

## **ATTORNEYS' FEES**

In the event of litigation or other action brought to enforce contract terms, each party agrees to bear its own attorney's fees and costs.

## **CONFIDENTIALITY / SAFEGUARDING OF INFORMATION**

The Contractor shall not use or disclose any information concerning the OIC or the acquiring party or the SAFECO entities, or information which may be classified as confidential, for any purpose not directly connected with the administration of this contract, except with prior written consent of the OIC or the acquiring party or SAFECO entities, or as may be required by law.

## **CONFLICT OF INTEREST**

Notwithstanding any determination by the Executive Ethics Board or other tribunal, the OIC may, in its sole discretion, by written notice to the Contractor terminate this contract if it is found after due notice and examination by the Agent that there is a violation of the Ethics in Public Service Act, Chapter 42.52 RCW; or any similar statute involving the Contractor in the procurement of, or services under this contract.

In the event this Contract is terminated as provided above, the OIC shall be entitled to pursue the same remedies against the Contractor as it could pursue in the event of a breach of the contract by the Contractor. The rights and remedies of the OIC provided for in this clause shall not be exclusive and are in addition to any other rights and remedies provided by the law. The existence of facts upon which the Agent makes any determination under this clause shall be an issue and may be reviewed as provided in the "Disputes" clause of this contract.

## **COPYRIGHT PROVISIONS**

Unless otherwise provided, all materials produced under this Contract shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the OIC. The OIC shall be considered the author of such materials. In the event the materials are not considered "works for hire" under the U.S. Copyright laws, Contractor hereby irrevocably assigns all rights, title, and interest in materials, including all intellectual property rights, to the OIC effective from the moment of creation of such materials.

Materials means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. Ownership includes the right to copyright, patent, register and the ability to transfer these rights.

For materials that are delivered under the Contract, but that incorporate pre-existing materials not produced under the Contract, Contractor hereby grants to the OIC a nonexclusive, royalty-free, irrevocable license (with rights to sublicense others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that Contractor has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the OIC.

The Contractor shall exert all reasonable effort to advise the OIC, at the time of delivery of Materials furnished under this Contract, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this

contract. The OIC shall receive prompt written notice of each notice or claim of copyright infringement received by the Contractor with respect to any data delivered under this Contract. The OIC shall have the right to modify or remove any restrictive markings placed upon the data by the Contractor.

## **COVENANT AGAINST CONTINGENT FEES**

The Contractor warrants that no person or selling agent has been employed or retained to solicit or secure this Contract upon an agreement or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees or bona fide established agents maintained by the Contractor for the purpose of securing business. The OIC shall have the right, in the event of breach of this clause by the Contractor, to annul this Contract without liability or, in its discretion, to deduct from the contract price or consideration or recover by other means the full amount of such commission, percentage, brokerage or contingent fee.

## **DISPUTES**

Except as otherwise provided in this Contract, when a bona fide dispute arises between the OIC and the Contractor and it cannot be resolved, either party may request a dispute hearing with the Agent. Disputes shall be resolved as quickly as possible.

- A. The request for a dispute hearing must:
- be in writing;
  - state the disputed issue(s);
  - state the relative positions of the parties;
  - state the Contractor's name, address, and contract number; and
  - be mailed to the Agent and the other party's (respondent's) Contract Manager within three (3) working days after the parties agree that they cannot resolve the dispute.

The respondent shall send a written answer to the requester's statement to both the agent and the requester within five (5) working days.

- B. The Agent shall review the written statements and reply in writing to both parties within ten (10) working days. The Agent may extend this period if necessary by notifying the parties.
- C. The parties agree that this dispute process shall precede any action in a judicial or quasi-judicial tribunal.

Agency and Contractor agree that, the existence of a dispute notwithstanding, they will continue without delay to carry out all their respective responsibilities under this Contract which are not affected by the dispute. Both parties agree to exercise good faith in the dispute resolution and to settle disputes prior to using the dispute resolution panel whenever possible.

## **GOVERNING LAW**

This Contract shall be construed and interpreted in accordance with the laws of the state of Washington, and the venue of any action brought hereunder shall be in the Superior Court for Thurston County.



## **INDEMNIFICATION**

To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the state of Washington, the OIC, and all officials, agents and employees of the State, from and against all claims for injuries or death arising out of or resulting from the performance of the Contract. Contractor's obligation to indemnify, defend and hold harmless includes any claim by Contractor's agents, employees, representatives, or any subcontractor or its employees.

Contractor expressly agrees to indemnify, defend, and hold harmless the State for any claim arising out of or incident to Contractor's or any subcontractor's performance or failure to perform the Contract. Contractor shall be required to indemnify, defend and hold harmless the State only to the extent claim is caused in whole or in part by negligent acts or omissions of Contractor.

Contractor waives its immunity under Title 51 RCW, any other Washington statutes or any other immunity provision to the extent it is required to indemnify, defend and hold harmless State and its agencies, officials, agents or employees.

## **INDEPENDENT CAPACITY OF THE CONTRACTOR**

The parties intend that an independent contractor relationship will be created by this contract. The Contractor and his or her employees or agents performing under this contract are not employees or agents of the OIC. The Contractor will not hold himself/herself out as or claim to be an officer or employee of the OIC or of the State of Washington by reason hereof, nor will the Contractor make any claim of right, privilege or benefit which would accrue to such employee under law. Conduct and control of the work will be solely with the Contractor.

## **INDUSTRIAL INSURANCE COVERAGE**

Prior to performing work under this contract, the Contractor shall provide or purchase industrial insurance coverage for the Contractor's employees, as may be required of an "employer" as defined in Title 51 RCW, and shall maintain full compliance with Title 51RCW during the course of this contract. Should the Contractor fail to secure industrial insurance coverage or fail to pay premiums, as may be required under Title 51 RCW, the OIC may deduct the amount of premiums and any penalties owing from the amount payable to the Contractor under the Contract and transmit the same to the Department of Labor and Industries, Division of Insurance Services. This provision does not waive any right under RCW 51.12.050 to collect from the Contractor amounts paid by the OIC.

## **LICENSING, ACCREDITATION, AND REGISTRATION**

The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements/standards, necessary for the performance of this Contract.

## **LIMITATION OF AUTHORITY**

Only the Agent or Agent's delegate by writing (delegation to be made prior to action) shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Contract. Furthermore, any alteration, amendment, modification, or waiver or any clause or condition of this contract is not effective or binding unless made in writing and signed by the Agent.

## **NONDISCRIMINATION**

During the performance of this contract, the Contractor shall comply with all federal and state nondiscrimination laws, regulations and policies.

In the event of the Contractor's noncompliance or refusal to comply with any nondiscrimination law, regulation, or policy this Contract may be rescinded, canceled or terminated in whole or in part, and the Contractor may be declared ineligible for further contracts with the OIC. The Contractor shall, however, be given a reasonable time in which to cure this noncompliance. Any dispute may be resolved in accordance with the "Disputes" procedure set forth herein.

## **PRIVACY**

Personal information collected, used or acquired in connection with this contract shall be used solely for the purposes of this Contract. Contractor agrees not to release, divulge, publish, transfer, sell or otherwise make known to unauthorized persons personal information without the express written consent of the OIC or the acquiring party or SAFECO entities or as provided by law. Contractor agrees to implement physical, electronic and managerial safeguards to prevent unauthorized access to personal information.

The OIC reserves the right to monitor, audit, or investigate the use of personal information collected, used or acquired by the contractor through this Contract.

Any breach of this provision may result in termination of the Contract and the demand for return of all personal information. The Contractor agrees to indemnify and hold harmless the OIC and the acquiring party and SAFECO entities for any damages related to the Contractor's unauthorized use of personal information.

For purposes of this provision, personal information includes, but is not limited to, information identifiable to an individual that relates to a natural person's health, finances, education, business, use or receipt of governmental services, or other activities, names, addresses, telephone numbers, social security numbers, driver license numbers, financial profiles, credit card numbers, financial identifiers and other identifying numbers.

## **RECORDS, DOCUMENTS, AND REPORTS**

The Contractor shall maintain complete financial records relating to this Contract and the services rendered including all books, records, documents, magnetic media, receipts, invoices and other evidence relating to this Contract and performance of the services described herein, including but not limited to, accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Contract. At no additional cost, these records including materials generated under the Contract shall be subject at all reasonable times to inspection, review, or audit by the Authority, the Office of the State Auditor, and state and federal officials so authorized by law, rule, regulation, or agreement. The Contractor shall retain such records for a period of six (6) years after the date of final payment.

If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

## **RIGHT OF INSPECTION**

The Contractor shall provide right of access to its facilities to the OIC, or any of its officers, or to any other authorized agent, or official of Washington State, all reasonable times, in order to monitor and evaluate performance, compliance, and/or quality assurance under this contract.

## **SAFEGUARDING OF INFORMATION**

The use or disclosure by any party of any information concerning the OIC for any purpose not directly connected with the administration of the OIC's or the Contractor's responsibilities with respect to services provided under this contract is prohibited except by written consent of the OIC.

## **SEVERABILITY**

If any provision of this Contract or any provision of any documents incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Contract which can be given effect without the invalid provision, and to this end the provisions of this contract are declared to be severable.

## **TERMINATION FOR CONVENIENCE**

Except as otherwise provided in this contract, the Agent may, by giving thirty (30) days written notice, beginning on the second day after the mailing, terminate this Contract in whole or in part when it is in the best interest of the OIC. If this contract is so terminated, the OIC shall be liable only for payment in accordance with the terms of this Contract for services rendered prior to the effective date of termination.

## **TERMINATION FOR DEFAULT**

By written notice the Agent may terminate the Contract, in whole or in part, for failure of the Contractor to perform any of the provisions of this contract. In such an event, the Contractor shall be liable for damages as authorized by law including, but not limited to, any cost difference between the original Contract and the replacement Contract or cover Contract and all administrative costs directly related to the replacement Contract, e.g., cost of the competitive bidding, mailing, advertising, and staff time; provided, that if (i) it is determined for any reason the contractor was not in default, or (ii) the Contractor's failure to perform is without Contractor's and/or Subcontractor's control, fault or negligence, the termination shall be deemed to be a "Termination for Convenience."

## **TERMINATION PROCEDURE**

Upon termination of this Contract the OIC, in addition to any other rights provided in this Contract, may require the Contractor to deliver to the OIC any property specifically produced or acquired for the performance of such part of this contract as has been terminated.

The OIC shall pay to the Contractor the agreed upon price, if separately stated, for completed work and service accepted by the OIC and the amount agreed upon by the Contractor and the OIC for (i) completed work and services for which no separate price is stated; (ii) partially completed work and services; (iii) other property or services which are accepted by the OIC; and (iv) the protection and preservation of property, unless the termination is for default, in which case the Agent shall determine

the extent of the liability. Failure to agree with such determination shall be a dispute within the meaning of the "Disputes" clause of this Contract. The OIC may withhold from any amounts due the Contractor such sum as the Agent determines to be necessary to protect the OIC against potential loss or liability.

The rights and remedies of the OIC provided in this section shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

After receipt of notice of termination, and except as otherwise directed by the Agent, the Contractor shall:

- A. Stop work under the Contract on the date, and to the extent specified in the notice;
- B. Place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under the Contract that is not terminated;
- C. Assign to the OIC, in the manner, at the times, and to the extent directed by the Agent, all the rights, title, and interest of the Contractor under the orders and subcontracts so terminated; in which case the OIC has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts;
- D. Settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts, with the approval or ratification of the Agent to the extent the Agent may require, which approval or ratification shall be final for all the purposes of this clause;
- E. Transfer title to the OIC and deliver in the manner, at the times, and to the extent directed by the Agent any property which, if the contract has been completed, would have been required to be furnished to the OIC;
- F. Complete performance of such part of the work as shall not have been terminated by the Agent; and
- G. Take such action as may be necessary, or as the Agent may direct, for the protection and preservation of the property related to this Contract which is in the possession of the Contractor and in which the OIC has or may acquire an interest.

## **WAIVER OF DEFAULT**

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this Contract shall not be deemed to be a waiver of any other or subsequent breach and shall not be construed to be a modification of the terms of this contract unless stated to be such in writing signed by the Agent and attached to the original Contract.